

SERVICE DATE - LATE RELEASE DECEMBER 19, 2003

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34450

PAV RAILROAD, INC.—ACQUISITION AND OPERATION
EXEMPTION—ASSETS OF N&T RAILWAY COMPANY LLC

Decided: December 19, 2003

By petition filed on December 15, 2003, PAV Railroad, Inc. (PAV) seeks a waiver of the requirements of 49 CFR 1150.32(e)¹ to permit the exemption it is seeking in this proceeding to become effective without satisfaction of the 60-day notice requirement. The waiver request will be granted.

On December 15, 2003, PAV, a noncarrier subsidiary of PAV Republic, Inc., filed a verified notice of exemption under 49 CFR 1150.31 to acquire from N&T Railway Company LLC (N&T) all of N&T's interests in the subject line, including track and related properties. The line extends for approximately 21 miles from a point at or near the Township of Canton, OH, to the points of interchange with the Norfolk Southern Railway Company and The Wheeling & Lake Erie Railway Company, at or near the City of Canton, OH.²

According to PAV, on October 6, 2003, N&T's parent company, Republic Engineered Products LLC (REP) filed for bankruptcy protection in the United States Bankruptcy Court for the Northern District of Ohio, Eastern Division, under Chapter 11 of the Bankruptcy Code. PAV states that, on November 7, 2003, it and REP entered into a contract under which PAV would purchase the assets of REP and its subsidiaries, including N&T. According to PAV, the Court entered an order for the sale on December 15, 2003, and has expressed a desire that the sale proceed on an expedited basis because certain vital customer contracts will expire at the end of

¹ "If the projected annual revenue of the carrier to be created by a transaction under this exemption exceeds \$5 million, applicant must, at least 60 days before the exemption becomes effective, post a notice of intent to undertake the proposed transaction at the workplace of the employees on the affected line(s) and serve a copy of the notice on the national offices of the labor unions with employees on the affected line(s), setting forth the types and numbers of jobs expected to be available, the terms of employment and principles of employee selection, and the lines that are to be transferred, and certify to the Board that it has done so."

² According to petitioner, there appear to be no mileposts on the line.

2003 but will not be renewed while REP is in bankruptcy. PAV claims that, for the sale to survive, it must be consummated on or before December 22, 2003.

PAV argues that the requirement that it provide 60 days notice to affected employees prior to the exemption's effective date is unnecessary and counterproductive in this case. It states that the rail labor unions and employees who would be affected by the sale already have sufficient notice of the transaction, and adds that, if the sale is completed, PAV plans to continue the operations of N&T and hire all of N&T's employees. Furthermore, it states that adherence to the 60-day notice requirement in this case would cause a delay in the bankruptcy proceedings beyond the end of 2003, thereby preventing REP from renewing the customer contracts and forcing REP and its subsidiaries to cease operations and dismiss employees whose jobs this notice provision aims to protect. For these reasons, PAV requests that the Board waive the 60-day notice provision of 49 CFR 1150.32(e) in this case.

DISCUSSION AND CONCLUSIONS

PAV's waiver request is reasonable and will be granted. The purpose of 49 CFR 1150.32(e) is to ensure that rail labor unions and employees who would be affected by the transfer of a line are given sufficient notice of the transaction before consummation.³ The responsibility to provide the general notice rested on PAV. The Board takes seriously the requirements of the rule and cautions PAV to comply fully with those requirements in the future. Here, however, the record shows that the labor union representing those employees that would be affected is informed of the transaction, has participated in discussions with PAV and, in fact, strongly supports both the waiver and the sale. In support, PAV attaches a letter dated December 15, 2003, to Board Chairman Roger Nober from David R. McCall, USWA District 1 Director, United Steelworkers of America, AFL-CIO, which represents the employees of N&T. He states that the union has been in discussions for some time with PAV on this matter, and it believes that the sale will save the jobs of thousands of REP employees, including the employees of N&T. Mr. McCall adds that the union is aware of the reason for the expedited handling of this case and, accordingly, does not object to PAV's waiver request but, in fact, actively requests such waiver as it is in the best interests of its members presently employed by N&T.

Furthermore, the Board agrees with PAV that, in this case, the interests of the employees in retaining their jobs is better served under an expedited process than with a process that retains the 60-day notice period. Accordingly, with respect to this transaction, the 60-day notice requirement will be waived. As a result, the exemption in this proceeding may become effective on December 22, 2003, 7 days after the filing of the notice. However, to ensure that employees are aware of the Board's action in granting the requested waiver, PAV shall, within 5 days after

³ See Acq. Of R. Lines Under 49 U.S.C. 10901 & 10902—Advance Notice, 2 S.T.B. 592 (1997).

service of this decision, post a copy of this decision at the workplace of the employees on the rail line and serve a copy of the decision on the national offices of the labor union representing the employees on the line, and certify to the Board that it has done so.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. PAV's request that the Board waive the notice requirements of 49 CFR 1150.32(e) is granted.

2. PAV shall, within 5 days after service of this decision, post a copy of this decision at the workplace of the employees on the rail line and serve a copy of the decision on the national offices of the labor union representing the employees on the line, and certify to the Board that it has done so.

3. This decision is effective on its service date.

By the Board, Chairman Nober.

Vernon A. Williams
Secretary